

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

JOHN DYESS,

Plaintiff,

v.

No. 3:07CV-635-WKW

KELLEY G. TAYLOR, et al.,

Defendants.

MOTION TO DISMISS

Defendants Kelley G. Taylor, Lynn Hammond (incorrectly named in the Complaint as “Len Hammond”), and John Saidla (collectively, “Defendants”), respectfully move the Court to dismiss the Complaint for failure to state a claim upon which relief may be granted and/or for lack of subject-matter jurisdiction. As grounds for this motion, Defendants state the following:

1. Plaintiff John D. Dyess, III, filed his *pro se* Complaint against the Defendants on July 11, 2007. The Complaint alleges various claims of sex, race, and religious discrimination under Title VII of the Civil Rights Act of 1964.

2. Defendants are all individual employees of Auburn University. The Complaint does not name Auburn University as a defendant. Nor did Plaintiff request that a summons be issued to Auburn University.

3. As a matter of law, Defendants are not, and have never been, Plaintiff's "employer[s]" under 42 U.S.C. § 2000e-2. The Eleventh Circuit Court of Appeals has consistently held that individual employees of an employer may not be sued under Title VII. *See, e.g., Dearth v. Collins*, 441 F. 3d 931 (11th Cir. 2006) ("To the extent that we have not so held before, we now expressly hold that relief under Title VII is available against only the employer and not against individual employees whose actions would constitute a violation of the Act, regardless of whether the employer is a public company or a private company.") (*citing Hinson v. Clinch County Bd. of Education*, 231 F. 3d 821, 827 (11th Cir. 2000); *Busby v. City of Orlando*, 931 F. 2d 764, 772 (11th Cir. 1991)).

4. Plaintiff's claims against Defendants are also due to be dismissed as a matter of law because Plaintiff never filed a Charge of Discrimination against any of the Defendants with the Equal Employment Opportunity Commission. Because Plaintiff did not exhaust his administrative remedies with regard to these Defendants, this Court lacks subject-matter jurisdiction to hear any of the claims alleged against them. *See* 42 U.S.C. § 2000e-5(e), (f).

Wherefore, these premises considered, Defendants move this Honorable Court to enter an order dismissing with prejudice all claims asserted against them in this action.

Respectfully submitted,

/s/ Aaron L. Dettling

DAVID R. BOYD
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CERTIFICATE OF SERVICE

I hereby certify that on this the 6th day of August, 2007, I filed the foregoing document using the CM/ECF system, and that I contemporaneously mailed a true and correct copy of the foregoing to the Plaintiff via first-class mail addressed as follows:

John D. Dyess
1509 Union Street
Mobile, Alabama 36617

/s/ Aaron L. Dettling

OF COUNSEL